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**1991/02/14**

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8

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ACTION STR-18

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INFO OCT-01 CM-01 EP-02 P-01 RA-01 EAP-04 012 A2 W0  
INFO LOG-00 AOS-00 AIO-00 AIT-03 CIAE-00 AMAC-01 CIME-00  
DOGE-00 EAP-00 EB-00 EXIN-04 E-01 FRB-03 H-01  
INRE-00 INR-02 IO-10 ITC-01 JUSE-00 LAB-04 NSAE-00  
OIC-02 OMB-01 OPIC-00 SIL-00 SP-00 STRE-00 TRSE-00  
USIE-00 /875W

FOREIGN TRADE REGULATIONS TO WHICH WE HAVE NO ACCESS. THE CENTRAL GOVERNMENT ISSUES A STEADY STREAM OF DIRECTIVES TO SUBORDINATE GOVERNMENTAL UNITS AND FTE'S THAT AFFECT WHAT CHINA CAN IMPORT AND BY WHOM. THESE DIRECTIVES USUALLY REMAIN WEIBU (NOT FOR RELEASE TO FOREIGNERS).

5. THE FOREIGN TRADE PLAN: EVERY FALL, BEIJING CONDUCTS AN ANNUAL TRADE CONFERENCE THAT DETERMINES MORE THAN HALF OF WHAT CHINA WILL IMPORT THE FOLLOWING YEAR. FOR A WIDE RANGE OF PRODUCTS, THE PLAN SETS ANNUAL IMPORT QUOTAS. IF PLANNERS DETERMINE THAT CHINESE DOMESTIC PRODUCTION IS SUFFICIENT, AN IMPORT QUOTA WILL BE SET AT ZERO. THE IMPORT PLAN IS A VERY CLOSELY HELD DOCUMENT. BEIJING REFUSES TO REVEAL ITS CONTENTS EVEN AFTER THE FACT.

6. MAJOR PROJECT INFORMATION: THE ANNUAL AND FIVE-YEAR PLANS ALSO DETERMINE A LARGE PORTION OF CHINA'S FIXED INVESTMENT PROJECTS. INFORMATION REGARDING THESE PROJECTS IS OFTEN UNAVAILABLE TO US FIRMS. IMPORTS REQUIRED FOR THESE PROJECTS ARE SELDOM TENDERED FOR BIDS. INSTEAD, THE CHINESE FTE'S NEGOTIATE DIRECTLY WITH SELECTED SUPPLIERS FOR THE REQUIRED EQUIPMENT. Q WE HAVE NO EVIDENCE THAT US FIRMS ARE SYSTEMATICALLY DISCRIMINATED AGAINST IN THIS PROCESS, BUT IT IS A FACT OF LIFE THAT THE JAPANESE ARE BETTER AT OPERATING IN

THIS OPAQUE ENVIRONMENT THAN AMERICANS.

7. TEXTILE TRANSHIPMENTS: THE CHINESE CLAIM TO HAVE ISSUED NEW REGULATIONS AIMED AT CONTROLLING THIS PROBLEM. WE HAVE REQUESTED A COPY OF THESE REGULATIONS, SO FAR WITH NO SUCCESS.

8. PAY CAPS: RUMORS HAVE BEEN AROUND FOR OVER A YEAR THAT MINIMUM/MAXIMUM CAPS ON CHINESE EMPLOYEE SALARIES HAVE BEEN ESTABLISHED AND THAT AN INTERNAL USE DOCUMENT TO THIS EFFECT HAD BEEN ISSUED. WE HAD UNOFFICIAL CONFIRMATION OF THIS IN SHANGHAI LAST YEAR, AND BEIJING CITY AUTHORITIES RECENTLY INFORMED JV MANAGERS THAT THE CAPS DO IN FACT EXIST. A THOROUGH ACCOUNT OF THE

RESTRICTIONS AND A COST OF THE REGULATION, HOWEVER, REMAIN UNAVAILABLE.

9. INVESTMENT PRIORITY AND APPROVAL GUIDELINES: Q HAVE KNOWN FOR SOME TIME THAT THE CHINESE GOVERNMENT WAS A VERY DETAILED LIST OF THE KINDS OF INVESTMENTS THAT IT WILL APPROVE. OTHER THAN DISCUSSING IN GENERAL TERMS WHAT IT LIKES (HIGH TECH, EXPORT-ORIENTED, INFRASTRUCTURE) AND DOES NOT LIKE ("NON-PRODUCTIVE" INVESTMENTS, ENTERPRISES TARGETING THE DOMESTIC MARKET), THE AUTHORITIES HAVE NOT BEEN WILLING TO GO INTO GREATER DETAIL ABOUT ITS PREFERENCES, WHICH GOVERN THE APPROVAL PROCESS, NOR PROVIDE COPIES OF THE RELEVANT DETAILED REGULATIONS.

10. TALKING POINTS

Q CHINA'S TRADE SYSTEM IS AMONG THE WORLD'S LEAST TRANSPARENT. WE BELIEVE THIS IS A MAJOR REASON FOR THE LOW LEVEL OF US EXPORTS TO CHINA.

Q WE LACK BASIC INFORMATION TO DETERMINE THE TRADE BARRIERS WE FACE IN CHINA. MOST OF CHINA'S TRADE LAW AND REGULATIONS REMAIN WEIBU.

P 140931Z FEB 91  
FM AMEMBASSY BEIJING  
TO SECSTATE WASHDC PRIORITY 9379  
INFO RUCPOC/USDOC WASHDC  
AMCONSUL GUANGZHOU  
AMCONSUL HONG KONG 3370  
AMCONSUL SHANGHAI  
AMCONSUL SHENYANG  
AMCONSUL GENEVA 3871  
AMEMBASSY TOKYO  
AIT TAIPEI 3707  
AMCONSUL BEIJING POUCH

United States Department of State  
Office of FOI, Privacy, & Classification Review  
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USDOC FOR 4428/IEP/EAP/OPRCHK/QVNTSHAN-LUCYK

GENEVA FOR USTR

DEPARTMENT PASS ELECTRONICALLY TO USTR FOR MASSEY

E.O. 12336: N/A

TAGS: ETRD, CH

SUBJECT: AUSTR MASSEY'S VISIT TO BEIJING: TRANSPARENCY OF CHINA'S TRADE SYSTEM

1. THE TRANSPARENCY OF CHINA'S TRADE SYSTEM IS ONE AREA THAT WE EXPECT AUSTIN MASSEY WILL RAISE DURING HIS UPCOMING VISIT TO BEIJING. OUR THOUGHTS ON THIS ISSUE ARE AS FOLLOWS.

2. LACK OF TRANSPARENCY IS ONE OF THE BIGGEST PROBLEMS FACING US EXPORTERS IN CHINA. THIS PROBLEM EXISTS AT ALL LEVELS OF GOVERNMENT AND EXTENDS TO DEALINGS WITH FOREIGN TRADE ENTERPRISES (FTE) AS WELL. CHINESE OFFICIALS HAVE TOLD US THAT PROMULGATION LAST YEAR OF AN ADMINISTRATIVE PROCEDURES LAW, WHICH PERMITS GOVERNMENT OFFICIALS TO BE SUED, WILL RESULT IN GREATER TRANSPARENCY BECAUSE OFFICIALS WILL BE VULNERABLE TO SUITS BASED ON ACTIONS THEY TOOK PURSUANT TO UNPUBLISHED REGULATIONS. HOWEVER, WE HAVE NOT NOTED ANY INCREASE IN TRANSPARENCY IN RECENT MONTHS.

3. IN ADDITION TO LACK OF TRANSPARENCY FOR EXISTING LAWS AND REGULATIONS, THE LAW/REGULATION MAKING PROCESS IN MOST CASES ALSO REMAINS OPAQUE TO US BUSINESS AND GOVERNMENT REPRESENTATIVES. THE FOLLOWING ARE SPECIFIC EXAMPLES WHERE LACK OF TRANSPARENCY IS A PARTICULAR PROBLEM:

4. TRADE REFORM: IN 1988, CHINA ADOPTED AN EXTENSIVE PACKAGE OF TRADE REFORMS. THESE REFORMS ALTERED THE RELATIONSHIP BETWEEN THE CENTRAL GOVERNMENT AND THE

PROVINCES. FTE'S RIGHTS AND RESPONSIBILITIES WERE EXTENSIVELY MODIFIED. IN ALL, TWENTY-THREE SEPARATE REFORMS WERE ADOPTED. THESE REFORMS HAVE NEVER BEEN PUBLISHED. THIS IS ONLY A SMALL PART OF THE BODY OF

CLASSIFIED BY: [X]  
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DATE: 5/6/94

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# THE ANNUAL TRADE PLAN HAS NEVER BEEN RELEASED, EVEN AFTER THE FACT. THIS PLAN DETERMINES MOST OF CHINA'S IMPORTS. WITHOUT ACCESS TO THIS INFORMATION WE HAVE NO WAY OF KNOWING WHETHER CHINA IS GIVING US PRODUCTS FAIR ACCESS TO THE CHINA MARKET.

# US EXPORTERS FREQUENTLY COMPLAIN THAT CHINA'S IMPORT SUBSTITUTION RULES ARE A MAJOR PROTECTIONIST BARRIER. THESE RULES HAVE NEVER BEEN PUBLICLY RELEASED. THEY ARE SUBJECT TO FREQUENT CHANGE WITHOUT NOTIFICATION.

# US FIRMS ALSO FIND IT DIFFICULT TO OBTAIN ADEQUATE INFORMATION ABOUT MAJOR INVESTMENT PROJECTS IN CHINA. THE JAPANESE HAVE DEVELOPED A NETWORK OF RELATIONSHIPS WITH CHINESE IMPORTERS THAT WORKS TO THE DISADVANTAGE OF U.S. FIRMS. LILLEY

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